

Message Text

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ACTION EB-03

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJ: CIVAIR - US/UK TALKS OF AIRPORT AND AIRWAYS

USER CHARGES

REF: LONDON 17853

1. DURING NOVEMBER 18 BILATERAL TALKS (REFTEL), UK WAS HIGHLY CRITICAL OF THE PROCEDURE THE U.S. HAD FOLLOWED IN CHARGING THE UK WITH DISCRIMINATION IN ASSESSING LANDING AND TERMINAL NAVIGATION FEES. AS BRITISH SEE THAT PROCEDURE, IN MARCH 1975 U.S. SENT A TECHNICAL TEAM TO LONDON TO GATHER FACTS AND DETAILS CONCERNING BRITISH CHARGING PRACTICES. DURING THOSE TALKS, BRITISH WERE TOLD U.S. TEAM WAS NOT THERE TO ARGUE PROS AND CONS OF THOSE PRACTICES BUT ONLY TO OBTAIN A COMPLETE AND ACCURATE PICTURE OF THE SITUATION. BRITISH HEARD NO MORE ABOUT USER CHARGE ISSUE UNTIL TRANSPORTATION SECRETARY MADE A "DETERMINATION" THAT BRITISH CHARGES WERE DISCRIMINATORY. DETERMINATION BECAME KNOWN TO THE PRESS AND AS A RESULT UK RECEIVED UNFAVORABLE PUBLICITY IN U.S. BEFORE THEY WERE EVEN GIVEN OPPORTUNITY TO TRY TO DEFEND THEIR PRACTICES. IN THESE CIRCUMSTANCES, BRITISH FEEL THEY WERE TREATED UNFAIRLY BY U.S. AUTHORITIES.

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2. FURTHERMORE, BRITISH FEEL AGGRIEVED BECAUSE THEY BE-

LIEVE THAT U.S. HAS IGNORED THE PROVISIONS OF TWO INTERNATIONAL AGREEMENTS BOTH OF WHICH ARE RELEVANT TO THE USER CHARGE ISSUE. ARTICLE 3 OF THE US/UK AIR SERVICES AGREEMENT RELATES TO AIRPORT AND NAVIGATION CHARGES AND SAME AGREEMENT CONTAINS PROVISIONS FOR CONSULTATIONS IN EVENT PROBLEMS ARISE AND FOR SETTLEMENT OF DISPUTES IF PROBLEMS CANNOT OTHERWISE BE RESOLVED. SIMILARLY, CHICAGO CONVENTION HAS PROVISIONS FOR DEALING WITH AIRPORT AND NAVIGATION CHARGES AND FOR THE SETTLEMENT OF DISPUTES.

3. WE REALIZE, OF COURSE, THAT FAIR COMPETITIVE PRACTICES ACT (FCPA) DOES NOT REQUIRE CONSULTATIONS WITH ANOTHER GOVERNMENT BEFORE A FORMAL DETERMINATION IS MADE THAT AN UNFAIR PRACTICE EXISTS. ON THE OTHER HAND, IT DOES NOT PRECLUDE SUCH CONSULTATIONS TO GIVE THE OTHER PARTY AN OPPORTUNITY TO DEFEND ITS PRACTICE. WE DO NOT WISH TO BELABOR THIS POINT UNDULY BUT IT WOULD APPEAR TO US THAT RESENTMENT ENGENDERED WITH BRITISH OVER PROCEDURE U.S. FOLLOWED WITH RESPECT TO FCPA FINDING WOULD BE FAIRLY TYPICAL OF OTHER GOVERNMENTS' REACTION IN SIMILAR CIRCUMSTANCES AND WE THOUGHT IT THEREFORE USEFUL TO UNDERSCORE THIS POINT SO THAT DEPARTMENT MIGHT BEAR IT IN MIND IN ANY FUTURE CASES. SETTLEMENT OF DISCRIMINATORY CHARGES AGAINST FOREIGN GOVERNMENTS WILL BE CONTENTIOUS ENOUGH WITHOUT ADDING TO THE DIFFICULTY BY THE PROCEDURES THE U.S. FOLLOWS.

RICHARDSON

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